

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 30 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0221-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RAYMOND JEFFERY CONROY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200500327

Honorable Janna L. Vanderpool, Judge
Honorable Robert C. Brown, Judge

REVIEW GRANTED; RELIEF DENIED

Raymond Conroy

Kingman
In Propria Persona

K E L L Y, Judge.

¶1 Pursuant to a 2006 plea agreement, petitioner Raymond Conroy was convicted of third-degree burglary, a class four felony. The trial court suspended the imposition of sentence and placed him on probation for four years. In 2008, Conroy admitted having violated the conditions of his probation. The court revoked his probation

and sentenced him to the maximum, three-year term of imprisonment. In 2007 and 2009, Conroy filed his first and second petitions for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. One month after the court denied relief on Conroy's second petition, he filed a pro se notice of post-conviction relief initiating his third post-conviction relief proceeding, which the court summarily dismissed. On review, Conroy challenges the court's summary dismissal of this most recent notice and his motion for reconsideration. We will not disturb the court's order absent a clear abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Based on the presentence report, it appears that in January 2004, the Casa Grande Fire Department reported that two portable radios were missing from the station after an individual, later identified as Conroy, had visited the station. A few weeks later, when Conroy was arrested in an unrelated matter, officers found portable radios of the type used by police and fire department officials on his person and in his vehicle. A subsequent search of Conroy's home and computer led to the recovery of the two radios that had been reported missing from the Casa Grande Fire Department. Conroy subsequently pled guilty to having stolen those radios.

¶3 In his form notice of post-conviction relief, Conroy marked the boxes indicating his claim was based on newly discovered evidence and a significant change in the law pursuant to Rule 32.1(e) and (g), providing the following explanation for his otherwise untimely and precluded claim: "Significant change in case law from U.S. Supreme Court." The trial court ruled that Conroy's "request is precluded as failing to state a claim upon which relief may be granted." The court specified that Conroy had not

provided “law or facts” to support “a second Post-Conviction Relief Petition.” *See* Rule 32.2(b) (permitting court to summarily dismiss notice of untimely or successive petition filed pursuant to Rules 32.1(d), (e), (f), (g) and (h), if petitioner fails to “set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner”).

¶4 Conroy then filed a “motion for reconsideration of denial of appointment of counsel,” asserting he had “recently” become aware of *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710 (2009), which he characterized as a significant change in the law under Rule 32.1(g). The trial court denied Conroy’s motion for reconsideration and reconfirmed the denial of post-conviction relief. In its ruling, the court found Conroy “is not entitled to a retroactive application of the rule set forth in [*Gant*] and, even if he were, the case is inapplicable to his circumstances. *Gant* . . . involved the issue of the propriety of a warrantless search of a vehicle. [Conroy’s] case involved searches pursuant to warrants.”

¶5 In his petition for review, Conroy asserts the trial court erred when it found *Gant* did not apply retroactively to his case, arguing the inventory search of his vehicle was an illegal pretext to obtain a warrant to search his home. However, because Conroy failed to set forth in his notice of post-conviction relief the substance of his claim or to give even the most basic recitation of why he would have been entitled to relief under *Gant*, he did not sustain his burden under Rule 32.2(b). Accordingly, the court did not

abuse its discretion when it rejected Conroy's claim, thus rendering it precluded and untimely.¹

¶6 Although the petition for review is granted, relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

¹We decline to consider the exhibits Conroy has attached to his petition for review, which apparently were not presented to the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (petitioner may not present new issues in petition for review).